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DISTRICT COURT OF GUAM
TERRITORY OF GUAM

ALAN SADHWANI; et al.,
Plaintiffs.
V.
HONGKONG AND SHANGHAI
BANKING CORP., LTD; et al.,
Defendants.

) Case No. CV 03-00036 DDP
)
) ORDER (1) GRANTING DEFENDANT'S
) MOTION TO STRIKE FIRST AMENDED
) COMPLAINT IN ITS ENTIRETY, (2)
) VACATING AS MOOT DEFENDANT'S
) MOTION TO DISMISS THIRD AND SIXTH
) CAUSES OF ACTION, AND (3) DENYING
) DEFENDANT'S MOTION FOR SANCTIONS
)
) [Motion filed on 04/30/04]
)
)
)

This matter comes before the Court on the defendant Hongkong and Shanghai Banking Corporation's ("HSBC") motion to strike the First Amended Complaint ("FAC") in whole or in part, or, in the alternative, to dismiss the third and sixth causes of action pursuant to Federal Rule of Civil Procedure 12(b)(6).¹ HSBC also moves the Court to impose sanctions on the plaintiffs pursuant to Rule 11(c)(1)(B). After reviewing and considering the materials submitted by the parties, the Court grants the motion to strike the FAC in its entirety, vacates as moot the motion to dismiss the third and sixth causes of action, and denies the motion for sanctions.

¹ All further references to "Rule" shall refer to the Federal Rules of Civil Procedure.

ORIGINAL

1 **I. Background**

2 On October 21, 2003, the plaintiffs filed a complaint against
3 HSBC and doe defendants, alleging causes of action for: (1) breach
4 of the covenant of good faith and fair dealing; (2) intentional
5 misrepresentation; (3) breach of contract on the promissory note
6 modification agreement; (4) breach of contract on the "work out
7 agreement;" (5) breach of fiduciary duty; and (6) breach of duty
8 not to divulge the plaintiffs' confidential banking information.

9 On November 5, 2003, the defendants removed this action to federal
10 court on the basis of diversity jurisdiction. One week later, on
11 November 12, 2003, HSBC filed an answer to the complaint. HSBC
12 filed a first amended answer and counterclaim on December 2, 2003.
13 Thereafter, on December 30, 2003, HSBC filed a motion to dismiss
14 the entire complaint under Rule 12(b)(6). On April 9, 2004, Judge
15 Unpingco denied the motion as to the first, second, fourth, and
16 fifth causes of action, and granted the motion as to the third and
17 sixth causes of action. Judge Unpingco expressly provided that the
18 dismissal of the third and sixth causes of action was "without
19 prejudice," and that the plaintiffs were "permitted to amend their
20 Complaint to re-assert the dismissed causes of action." (04/09/04
21 Order at 13:18-19 (emphasis added).)

22 On April 27, 2004, the plaintiffs timely filed the FAC,
23 amending the third and sixth causes of action as permitted by the
24 Court's April 9, 2004 Order. However, despite not having sought
25 and obtained leave of court or the consent of HSBC, the plaintiffs
26 inserted new paragraphs and alleged additional facts in the first,
27 second, fourth, and fifth causes of action. HSBC now moves the
28 Court to strike the entire FAC as being without legal effect, or,

1 in the alternative, to strike all new amendments except those
2 contained in the third cause of action.² Should the Court strike
3 only the new amendments unrelated to the third cause of action,
4 HSBC moves the Court to dismiss the third and sixth causes of
5 action for failure to state a claim upon which relief can be
6 granted.

7 **II. Discussion**

8 **A. Motion to Strike**

9 **1. Legal Standard**

10 Rule 15(a) provides in relevant part:

11 A party may amend the party's pleading once as a matter
12 of course at any time before a responsive pleading is
13 served Otherwise a party may amend the party's
14 pleading only by leave of court or by written consent of
the adverse party; and leave shall be freely given when
justice so requires.

15 Fed. R. Civ. P. 15(a).

16 **2. Analysis**

17 Pursuant to the plain language of Rule 15(a), after a
18 responsive pleading has been filed, a party may amend the party's
19 pleading "only by leave of court or by written consent of the
20 adverse party." Id. An answer to a complaint constitutes a
21 responsive pleading. Crum v. Circus Circus Enters., 231 F.3d 1129,
22 1130 (9th Cir. 2000). Here, HSBC filed an answer to the complaint
23 on November 12, 2003, and a first amended answer to the complaint
24

25 ² HSBC asserts that, while the Court's April 9, 2004 Order
26 granted the plaintiffs limited leave to amend their sixth cause of
27 action by "specify[ing] what law(s) HSBC allegedly violated"
28 (04/09/04 Order at 13:13-14), the plaintiffs, without leave of
court or the consent of HSBC, alleged an entirely new cause of
action in their sixth claim (Mot. at 4). According to HSBC, the
sixth cause of action in the FAC violates Rule 15(a) and must be
stricken. (Id.)

1 on December 2, 2003. Thus, HSBC has filed a responsive pleading to
2 the complaint. Moreover, in the Court's April 9, 2004 Order, which
3 dismissed the third and sixth causes of action of the complaint
4 without prejudice, Judge Unpingco expressly provided that the
5 plaintiffs were "permitted to amend their Complaint to re-assert
6 the dismissed causes of action." (04/09/04 Order at 13:18-19
7 (emphasis added).) Judge Unpingco permitted the plaintiffs to
8 amend only the third and sixth causes of action. Thus, before the
9 plaintiffs could properly amend portions of the complaint other
10 than the third and sixth causes of action, they were required to
11 obtain leave of court or the written consent of HSBC. Despite
12 having failed to obtain leave of court or the written consent of
13 HSBC, the plaintiffs amended their complaint to contain new
14 paragraphs and allegations in the first, second, fourth, and fifth
15 causes of action. Because the plaintiffs' FAC exceeds the scope of
16 leave to amend that was provided by the Court, the FAC is without
17 legal effect and must be stricken. Accordingly, the Court grants
18 HSBC's motion to strike the FAC in its entirety. Given the Court's
19 ruling with respect to HSBC's motion to strike, HSBC's motion to
20 dismiss the third and sixth causes of action is hereby vacated as
21 moot.

22 In their opposition brief, the plaintiffs expressly request
23 leave to amend the complaint pursuant to Rule 15(a) in the event
24 that the Court grants HSBC's motion to strike. (Opp. at 5.) A
25 party seeking leave to amend a complaint is not always required to
26 file a separate formal motion. Leave to amend has been granted
27 where, as here, a plaintiff "expressly requested" to amend even
28 though the request "was not contained in a properly captioned

1 motion paper." Scott v. Eversole Mortuary, 522 F.2d 1110, 1116 n.8
2 (9th Cir. 1975). The decision to grant or deny leave to amend
3 rests in the sound discretion of the trial court. Swanson v.
4 United States Forest Serv., 87 F.3d 339, 343 (9th Cir. 1996). As
5 previously stated, Rule 15(a) provides that "leave shall be freely
6 given when justice so requires." Fed. R. Civ. P. 15(a). This
7 policy is to be applied with "extreme liberality." Morongo Band of
8 Mission Indians v. Rose, 893 F.2d 1074, 1079 (9th Cir. 1990).
9 Here, HSBC has not argued that granting the plaintiffs leave to
10 amend would be unduly prejudicial to HSBC, and the Court is unaware
11 of any reason why the plaintiffs should not be given leave to
12 amend. Thus, the Court grants the plaintiffs leave to amend, and
13 orders them to properly file a FAC no later than ten (10) days from
14 the date of entry of this order. The Court further orders the
15 plaintiffs to follow all applicable rules in the future. Failure
16 to do so may result in sanctions.

17 B. Motion for Sanctions

18 HSBC moves the Court to impose sanctions upon the plaintiffs
19 under Rule 11. HSBC contends that the plaintiffs intentionally and
20 surreptitiously filed the FAC in violation of Rule 15(a) and the
21 Court's April 9, 2004 Order. (Mot. at 4.) For the following
22 reasons, the Court denies HSBC's motion for sanctions.

23 First, HSBC failed to make a motion for sanctions "separately
24 from other motions or requests . . .," as required by Rule
25 11(c)(1)(A). Second, although the Court has the authority under
26 Rule 11(c)(1)(B) to levy sanctions on its own initiative, the Court
27 will neither impose sanctions nor order the plaintiffs' counsel to
28 show cause as to why the plaintiffs should not be sanctioned.

1 "Judges . . . should impose sanctions on lawyers for their mode of
2 advocacy only in the most egregious situations, lest lawyers be
3 deterred from vigorous representation of their clients." United
4 Nat'l Ins. Co. v. R&D Latex Corp., 242 F.3d 1102, 1115 (9th Cir.
5 2001). It does not appear to the Court that the plaintiffs'
6 conduct was so egregious as to warrant the imposition of sanctions.
7 The Court, therefore, denies HSBC's motion for sanctions.

8 **III. Conclusion**

9 For the foregoing reasons, the Court: (1) grants HSBC's motion
10 to strike the FAC in its entirety; (2) vacates as moot HSBC's
11 motion to dismiss the third and sixth causes of action; and (3)
12 denies HSBC's motion for sanctions. The Court grants the
13 plaintiffs ten (10) days from the date of entry of this order
14 within which to amend their complaint.

15
16 IT IS SO ORDERED.

17
18
19 Dated: 5-28-04


DEAN D. PREGERSON*
United States District Judge

20 Notice is hereby given that this document was
21 entered on the docket on JUN 01 2004.
22 No separate notice of entry on the docket will
be issued by this Court.

23 Mary L. M. Moran
Clerk, District Court of Guam

24 By:  JUN 01 2004
Deputy Clerk Date

25
26 * Honorable Dean D. Pregerson, United States District Judge for
27 the Central District of California, sitting by designation.